

Leonard R. Berman
9220 SW Barbur Blvd., Suite 119, Box 180
Portland, OR 97219
(503) 516-3715
OSB # 96040
Easyrabbi@yahoo.com
ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TRISHA TOBLER,) Case No. 3:20-02110AC
PLAINTIFF,) COMPLAINT FOR NEGLIGENCE,
v.) MEDICAL NEGLIGENCE,
STATE OF OREGON, CHRISTOPHER DIGIULIO, MD, DEENA LOZIER, NP .LORI SCHAIN, NP, C. PRIES, RN, JANICE BUENAFE, MD,) INTENTIONAL INFILCTION OF EMOTIONAL , NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS, 42 USC. SEC. 1983 EIGHT AMENDMENT VIOLATION
DEFENDANTS,)))))

Plaintiff demands a jury trial and alleges:

1. Trisha Tobler resides in Multnomah, County.
2. Defendant State of Oregon is a local government that provides medical care to inmates at Coffee Creek Correctional Facility (CCCF) in Wilsonville. . Defendant State of Oregon provides such health care to patients through physicians, nurses and other health care professionals who act as its employees or agents. Defendant State of Oregon is vicariously liable for the negligence of its agents and employees, alleged below, each of whom were acting within the course and scope of their agency and/or employment while providing, or failing to provide, care to plaintiff.
3. In accordance with ORS 471.565, written notice of these claims was provided to the State of Oregon within 180 days of the below described incident.
4. Starting on April 4, 2017, Trisha Tobler entered Coffee Creek Correctional Facility CCCF presenting to medical on April 17, 2018 with a hot and extremely painful lesion on her right ear lobe. She was seen by the medical department numerous times after repeated "kytes" claiming intense pain and suffering, leading to ultimate grievances, and was only approved for surgical treatment more than two years later on August 27, 2019, removing most of the top of her ear lobe. For more than two years she suffered horrible pain and discomfort. At age 46, she now has a lifetime, of likely mostly non-inevitable, ear disfigurement.

5. Deena Lozier, NP saw her for most of these visits and never accelerated the diagnoses and treatment until more than two years later.

6. Lori Schain, RN, supervised Lozier, for most of these visits and never accelerated the diagnoses and treatment until more than two years later.

7. C. Pries, RN, was the medical services manager overseeing Lozier and Schain, and never accelerated the diagnoses and treatment until more than two years later.

8. Janice Buenafe MD saw plaintiff on or about January 30, 2018, notes her ear sore issue and orders no further tests nor treatment on that day, or any other day from that day forward into 2019 or ever.

8. Christopher DiGiulio was the Medical Director for the State of Oregon and corrections and never accelerated the diagnoses and treatment, nor authorized the TLC committee for surgery until until more than two years later.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT State of Oregon

for negligence, plaintiff alleges:

Plaintiff realleges and incorporates by reference paragraphs 1-9, above.

10. Prior to April 4, 2017, defendant State of Oregon, by and through its agents and employees, who were at all times mentioned herein acting within the course and scope of their agency and employment, by information and belief, knew or had reason to know that its medical services were below the standard of care for the community. A cause of all damages and injuries

alleged herein was the negligence of defendant State of Oregon by and through its agents and employees in one or more of the following particulars:

- (a) In allowing or retaining DiGuilio, Lozier, Schain, Buenafe, and Pries to treat female hospital patients when defendant State of Oregon knew or had reason to know that they were not competent.
- (b) In failing to adequately supervise medical staff timely to treat Tobler for twenty-two months,
- (c) In failing to adequately select, supervise, and train its nurses and staff to prevent the delay and deficient diagnoses and treatment,
- (d) In failing to properly investigate reports of deficient medical care of Inmates and remediate them.

**FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS for an
Eighth Amendment Violation**

. 11. The Individual defendants and State's twenty-two month delay in timely treatment and possible surgery constituted a reckless and wanton disregard for the health, pain, suffering, ongoing discomfort and disfigurement of Trisha Tobler.

**FOR A THIRD CAUSE OF ACTION FOR AGAINST DEFENDANTS STATE OF
OREGON, DIGIULIO, LOZIER, PRIES, BUENAFE AND SCHAIN for
Intentional Infliction of Emotional Distress, plaintiff alleges:**

FIRST CLAIM FOR RELIEF

12. The defendants lax diagnoses and treatment of a very painful ear lobe lesion, leading to permanent disfigurement caused committed multiple instances of intentional infliction of severe emotional distress as plaintiff suffered repeated severe emotional distress for more than two years and continuing until today, with no end in sight. Her disfigured ear is a daily reminder of her torture propounded by the state.

SECOND CLAIM FOR RELIEF

13. In the alternative, the defendants lax diagnoses and treatment of a very painful ear lobe lesion, leading to permanent disfigurement caused committed multiple instances of negligent infliction of severe emotional distress as plaintiff suffered repeated severe emotional distress for more than two years and continuing until today , with no end in sight. Her disfigured ear is a daily reminder of her torture propounded by the state.

FOR A FOURTH CAUSE OF ACTION FOR AGAINST DEFENDANTS

DIGIULIO, LOZIER, PRIES, BUENAFE AND SCHAIN for Medical Negligence.

14. Digiulio, Lozier, Pries, Buenafe, and Schain breached the medical standard of care due to plaintiff Trisha Tobler when they failed to diagnose and treat properly her ear lesion for more than two years, leading to interminable pain, suffering and a lifetime of permanent disfigurement.

DEMAND FOR PUNITIVE DAMAGES

15.The above-described conduct was a product of a wanton and reckless disregard for the health and safety of plaintiff, and individual defendants knew or should have known they were violating the law and hence liable for punitive damages.

DEMAND FOR TRIAL BY JURY

Plaintiff(s) request trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Trisha Tobler requests that this Honorable Court grants the following relief:

- A. Judgment and an award of compensatory damages in Plaintiffs' favor as to each and all claims for relief asserted herein against each and all Defendants;
- B. judgment and an award of punitive damages in Plaintiffs' favor as to each and all claims for relief asserted herein against each and all individual Defendants;
- C. monetary award of attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 23; and,
- D. Such other relief that the Court deems just and appropriate.

Dated: December 29, 2021.

Respectfully Submitted,

/s/ Leonard R. Berman

Leonard R. Berman, OSB #96040
Easyrabbi@yahoo.com
Attorney for Plaintiff

